

## CHAPTER 3

# COURT REPORTING

Court reporting is an old and honored profession. It is an endeavor you may be proud of because it serves a definite need. Wherever prominent people speak, a reporter is close by recording their words for dissemination to the public and for posterity. Whenever a general court-martial (GCM) or a special court-martial (SPCM) is sitting, a court reporter is recording the proceedings of that court-martial. This is done to preserve an account of what occurred on that day. You paint a complete picture of the proceeding by your finished product, the record of trial. The reviewer, staff judge advocate (SJA), convening authority (CA), the Navy and Marine Corps Court of Military Review (NMCMR), and the Court of Military Appeals (COMA) rely solely upon your record of trial to arrive at their decisions. Our motto as reporters is The Record Never Forgets.

Probably the most important duty you perform as an LN is to serve as a court reporter. As a court reporter, you must record and transcribe various types of proceedings and then place the transcription of these proceedings into the proper format. The most common types of proceedings you will record and transcribe include courts-martial, Article 32 pretrial investigations, courts of inquiry, *Manual of the Judge Advocate General* (JAGMAN) investigations as directed, and depositions. In this chapter you will become familiar with the general qualifications, duties, and functions of the court reporter. You also will become familiar with the different methods used in court reporting, administrative requirements, and standardized transcribing techniques. In addition you will examine these basic functions and duties along with some helpful hints and suggestions that will assist you as you perform your duties as a court reporter.

### FUNCTIONS OF THE COURT REPORTER

The primary function of a court reporter is to record all proceedings verbatim (word for word) and then transcribe what has been recorded into the proper format for that particular proceeding. The court reporter is also responsible for performing several related administrative functions before, during, and

after each proceeding. Many times these additional functions will include such duties as scheduling and preparing the courtroom, preparing requests for witnesses, preparing and distributing posttrial documents, and preparing confinement orders. Some of these duties are addressed in this chapter and the remainder are addressed in chapter 6, Pretrial Matters.

Before looking at the general duties of the court reporter, let's take a brief look at the issue of appointment and detailing of court reporters.

### APPOINTMENT AND DETAILING OF REPORTERS

Article 28, *Uniform Code of Military Justice* (UCMJ), provides, in part, that "Under such regulations as the Secretary concerned may prescribe, the CA of a court-martial, military commission, or court of inquiry will detail or employ qualified reporters, who shall record the proceedings of and testimony taken before that court or commission."

The *Rules for Courts-Martial* (R.C.M.) 405(d)(3)(B), *Manual for Courts-Martial* (MCM), 1984, provides, in part, that "The commander who directed the pretrial investigation may also, as a matter of discretion, detail or request an appropriate authority to detail a reporter."

R.C.M. 501(c) provides, in part, that "Reporters may be detailed or employed as appropriate but need not be detailed by the CA personally." The CA may direct that a reporter not be used in an SPCM. Regulations of the Secretary concerned may also require or restrict the use of reporters in SPCMs.

A bad-conduct discharge (BCD) may not be adjudged by an SPCM unless a verbatim record of the proceedings and testimony was made.

Reporters are not detailed to an SPCM to take a verbatim record unless the SPCM is convened by (1) an officer exercising general court-martial jurisdiction (OEGCMJ) or (2) a GCM CA who is granted the authorization. Reporters are not detailed to summary courts-martial (SCM).

Normally the commanding officer (CO) of the naval legal service office (NLSO) directs the employment of reporters.

R.C.M. 502(e), MCM, 1984, refers to the qualifications of reporters and provides, in part, that “The qualifications of reporters may be prescribed by the Secretary concerned. No person shall act as reporter in any case in which that person is, or has been, in the same case (1) the accuser, (2) a witness, (3) an investigating officer, (4) counsel for any party, or (5) a member of the court-martial or of any earlier court-martial of which the trial is a rehearing, new, or other trial.”

## OATHS

R.C.M. 807(b) provides that “The reporters shall take an oath to perform their duties faithfully.” The JAGMAN lists the required verbiage of the oath:

**Oath for reporters:** The trial counsel (TC) will administer the following oath to every reporter of a court-martial who has not been previously sworn:

Do you (swear) (affirm) that you will faithfully perform the duties of reporter to this court-martial (so help you God)?”

The TC administers the oath to the reporter at the court-martial. At the discretion of the CO of the NLSO to which the reporter is assigned or employed, reporters may execute a written oath to perform their duties faithfully in all cases to which they are detailed or employed before an officer qualified to administer oaths.

When a reporter who has been sworn is used by, reassigned to, or employed by a different GCM CA, a copy of the oath is given to the CO of the NLSO of the new CA. The CO of the NLSO authorizing the administration of a written oath maintains a copy of the oath so it may readily be determined that the reporter has been previously sworn. When reporters are not sworn in court because they have previously been sworn, this fact is noted in the transcript or the record of trial.

When calling the court-martial to order for the first time in a case, the military judge makes sure the name and rank of the detailed court reporter are announced. After all personnel of the court have been accounted for, the TC announces whether the reporter, if one is present, has been previously sworn. If not sworn, the reporter is then sworn. If a reporter is ever

replaced during the trial, this fact must be noted in the record.

## VERBATIM REPORTING

You, as the court reporter, are responsible for recording all proceedings verbatim. Actually, the term *verbatim reporting* may be misleading. There will, of course, be instances where you will know beforehand that a verbatim transcript of the proceedings will not be required, as in an SPCM where a punitive discharge is not authorized. Good reporting techniques, however, dictate that you should record all proceedings verbatim. There is always the chance that the CA may desire a verbatim transcript even though such a transcript would not otherwise be required. Obviously, you cannot prepare a verbatim transcript unless you have previously recorded the proceedings word for word. Also, there are certain portions of a summarized record that must be transcribed verbatim.

## GENERAL DUTIES OF THE COURT REPORTER

The most important thing you should always keep in mind when you are detailed as a reporter for any military court or commission is that it is your job to get it all down.

If a question is raised whether any particular matter is included in the terms *proceedings of* and *testimony taken*, the military judge determines the question according to applicable law and regulations. It is the duty of the reporter to include in the record everything that is said or takes place in open sessions and in hearings out of the presence of the court members. The reporter does not omit any portion of these proceedings from the record.

### Before Trial

Before trial you may be directed to perform other administrative duties that could include typing and preparing the following documents:

- Article 32 investigations
- Oral depositions
- Investigating officer’s report
- Advice of the SJA
- Pretrial agreements

- Stipulations
- Charges and specifications
- Fliers
- Findings and sentence work sheets
- Proposed instruction to the members

Make sure copies of the appropriate court-martial convening order and any amendments are before each member of the court, military judge, TC, defense counsel (DC), and the accused. In addition, if the case was originally referred to one convening order and then re-referred to another, you must furnish the original order to the military judge. You also will provide a copy of the charges and specifications, questions forms, and sufficient paper and pencils to all parties to the trial.

You must make sure your recording equipment is in proper working condition and the other tools of good reporting are available; for example, extra pencils, extra prenumbered tapes, chalk, blackboard, erasers, tags for real evidence, and a reporter's work sheet.

Some of these pretrial administrative duties are addressed in this chapter and some are addressed later in chapter 6.

### **During Trial**

There are many duties of the court reporter during the actual proceedings. Of course, the most important duty is the actual verbatim recording of all proceedings. This also includes all actions of the witnesses, accused, counsel, and any other parties to the trial.

You may be required to remain in the courtroom during short recesses when the TC is unable to be present. You also will be tasked with securing the courtroom during meal recesses, overnight recesses, and any other period that necessitates the absence of the TC or yourself for extended periods. Make sure any evidence admitted during the trial is secured during such recesses or adjournments.

You are authorized, through the military judge, to stop the proceedings for various reasons. Keep these interruptions to a minimum. Some of the allowable reasons for stopping proceedings include the following:

- You did not hear the testimony of the witness.
- You did not hear something said by any other party to the trial.

- Time is required to change tapes.
- Time is required to mark exhibits.
- Anything else that requires your attention to make an accurate verbatim transcript.

### **After Trial**

After the trial is complete, you are responsible for retrieving all exhibits that were admitted in evidence (and those offered but not admitted) from the TC and DC, and any extra copies of these exhibits that are available. If charts, blackboards, or real evidence were introduced, you need to make the necessary arrangements to have these photographed immediately after the trial or, if time permits, during recesses or adjournments, as directed by the TC.

While the military judge or members see the physical evidence, the NCMR, which has fact-finding power, must often rely on photographs or descriptions. The TC has the responsibility of making sure the substituted photographs or descriptions adequately depict the exhibit. While the use of a self-developing photograph is convenient, the resulting photograph is often virtually useless to the appellate courts. Do not overlook the use of local photographic offices to help in preparing adequate photographic representations of the trial exhibits.

After the proceedings you are responsible for cleaning up the courtroom for the next trial and preparing the report of result of trial and a confinement order, if necessary, for the TC.

Last but certainly not least, you may be responsible for the preparation of the record of trial in that court. Each NLSO conducts business differently. If you are assigned to the court reporting and transcription shop, you may be required, at times, to transcribe your own courts. However, cases may also be turned in to the supervisor who then assigns them to the next available transcriptionist for preparation. It is, therefore, very important to remember that you may not be the one assigned to transcribe the court you are recording, so do the best job possible.

### **Loss of Recordings**

The military judge may, before authentication of the record, hold a posttrial session to repeat proceedings in which a verbatim transcript cannot be prepared because of loss of recordings.

## **Retention of Trial Notes**

For cases in which a summarized record of trial is authorized, retain the notes or recordings of the original proceedings until the record is authenticated.

For cases in which a verbatim transcription is required, retain the verbatim notes or recordings of the original proceedings until completion of final action or appellate review, whichever is later.

The verbatim notes or recordings may be kept by the TC, an assistant, a court reporter, or the supervisor of the court reporting and transcription shop.

## **COURT REPORTING METHODS AND EQUIPMENT**

You may use various types of equipment and methods to record and transcribe proceedings. The type of equipment and method used will depend largely upon the availability of equipment and the method you have been trained to use. Proceedings may be recorded using longhand, shorthand, or by using either mechanical or electronic equipment. As a practical matter, however, recording proceedings using longhand would be unduly slow and cumbersome and should not be used except as a last resort when none of the other more effective methods and means of recording are available. To help you understand more fully these methods, a brief discussion of each is provided as follows.

### **SHORTHAND**

Shorthand is a more efficient method of recording than longhand because it uses abbreviations, symbols, and characters in the place of letters, words, and phrases in recording what is being dictated. The only equipment needed for this method is pencils and paper.

### **MULTICHANNEL TAPE RECORDER**

The use of a multichannel tape recorder can guarantee that everything said during a particular proceeding is recorded. The major drawback of this method is that the individuals speaking may not be readily identified when the recording is transcribed and gestures and other nonverbal actions are not recorded at all. The use of a multichannel tape recording system has been found to be useful as a primary system with the incorporation of the reporter

notes to add in the missing elements of speaker identification and nonverbal responses and gestures.

## **REPORTER'S LOG**

During the proceedings of an SPCM or a GCM, the reporter is responsible not only for recording verbatim the proceedings of the court but also for noting in the record such items as the stages of examination; time of opening, recessing, closing, and adjournment of the court; and the marking of exhibits.

The reporter's log, Figure 3-1, can be a great aid to you both during and after the court. Use this log in any court-martial you record. The log has a place to fill in all the pertinent data that you will need to help in the transcription of the record of trial.

## **GENERAL RECORDING INFORMATION AND REPORTING TIPS**

In the following paragraphs, you will find some tips to help you produce records of trial that will be consistent and uniform in format. General information on such items as margins, page numbering, abbreviations, grammar, and punctuation is included. Taking a few minutes now to familiarize yourself with these basic rules will save you much time in the future and also enable you to turn out a finished product ready for immediate review. The following information relates primarily to SPCMs and GCMs. We will discuss the preparation of SCM records later in this chapter.

### **MARGINS**

The left margin of the record of trial should be 1 inch (10 picas or 12 elite spaces). The right margin should be set 1/2 inch from the side of the page (5 picas or 6 elite spaces.) The top margin on all pages should be 2 1/2 inches (15 lines) to allow room for binding with ACCO fasteners. The bottom margin on all pages should end as close to 1 inch (but not more than 2 inches) from the bottom of the page as possible. If the typed text ends more than 2 inches from the bottom of the page, as when it has been necessary to insert an additional partial page of testimony, you must draw a diagonal line from the left margin, starting immediately under the last line of typing to the right margin 1/2 inch from the bottom of the page. The reason for this action is to make the reviewing authorities aware that nothing has been inadvertently omitted from the record.

REPORTER'S LOG

SPECIAL: \_\_\_\_\_ GENERAL: \_\_\_\_\_ ACCUSED: \_\_\_\_\_  
REPORTER: \_\_\_\_\_ MJ: \_\_\_\_\_  
TC: \_\_\_\_\_ DC: \_\_\_\_\_ IMC: \_\_\_\_\_  
CIV COUNSEL: \_\_\_\_\_ CONV ORD & MODS: \_\_\_\_\_  
CONVENING AUTHORITY: \_\_\_\_\_  
DATE(S) OF TRIAL: \_\_\_\_\_ PLACE OF TRIAL \_\_\_\_\_

NOTE	TIME	NOTE	TIME	NOTE	TIME	NOTE	TIME
_____	_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____	_____

PLEAS

FINDINGS

SENTENCE

<u>PROSECUTION WITNESSES</u>	<u>DEFENSE WITNESSES</u>	<u>COURT WITNESSES</u>
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1. _____	_____	_____
2. _____	_____	_____
3. _____	_____	_____
4. _____	_____	_____
5. _____	_____	_____

<u>PROSECUTION EXHIBITS</u>	<u>DEFENSE EXHIBITS</u>	<u>APPELLATE EXHIBITS</u>
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1. _____	A. _____	I. _____
2. _____	B. _____	II. _____
3. _____	C. _____	III. _____
4. _____	D. _____	IV. _____
5. _____	E. _____	V. _____

Figure 3-1.—Reporter's log

### REPORTER'S LOG (Continuation Sheet)

[illegible]

**Figure 3-1.—Reporter's log—Continued.**

Indent two spaces from the left margin for each prefix; for example, TC, DC, PRES, ACCUSED, WITNESS, Q, and A. The second and subsequent lines should be typed flush with the left margin. Examples are as follows:

TC: I object to the last question of the defense on the grounds that it calls for an opinion on the part of the witness.

Q. Could you please relate, to the members of the court, the circumstances surrounding the burglary on the evening in question?

## NUMBERING PAGES

Number pages in the center of the page 1/2 inch (three lines) from the bottom of the page. If, during the course of transcribing the record, you accidentally skip a page number or duplicate a page number, correct the error as follows:

SKIPPED PAGE NUMBER—for example, numbers jump from 18 to 20, but nothing has been omitted from the transcript.

18

There is no page 19

Next page 20

NUMBER DUPLICATED OR EXTRA PAGE TO BE INSERTED—use the preceding page number plus an “a” as in “19a.” At the bottom of the preceding page, type:

19

Next page is 19a

On the inserted page, type:

19a

Next page 20

## ABBREVIATIONS

Unless a word or acronym is actually spoken as an abbreviation; for example, BM1, USS, or U.S. Navy, only the following abbreviations are

authorized. Keep in mind that you use the first four of these abbreviations only as prefixes to statements and they are not authorized for use in the text or when transcribing gestures or motions. The last five may be used in the text of the record:

TC: Trial counsel

DC: Defense counsel

PRES: President

MJ: Military judge

Mr. Mister

Mrs. Mistress

U.S. United States

USS United States Ship

Dr. Doctor

## GRAMMAR AND PUNCTUATION IN TRANSCRIPTION

You have previously studied general punctuation in chapter 1. Certain rules are covered here because you have a greater need to be familiar with them in legal work than in typing correspondence.

Use the apostrophe (') to form contractions; to form possessives of nouns (but not of pronouns); as a single quotation mark; to express feet and minutes; and to form the exclamation mark (unless your typewriter or computer keyboard has an exclamation mark on its keyboard). You form the plurals of letters and of numbers by adding 's. Within a word the apostrophe is written without spaces. Examples: It's not true that a company reported its change of policy. Boys' and girls' camps are advertised in this month's issue. Appellate is spelled with two L's.

Two spaces must follow a question mark (?) that appears at the end of a sentence. However, in the rare instances that the question mark appears within a sentence, leave only one space after the question mark. Examples: Q. Can he do it? or anyone? Q. What was the percentage of interest you paid?

Do not leave spaces between brackets [ ] and the matter enclosed. In the event the matter appearing in

brackets appears in the middle of a sentence, leave one space before the opening bracket and one space after the closing bracket. Example: Q. What did you see? A. About this far [gesturing] from the hammer, on the upper side of. . .

Place the period and the comma inside the closing quotation marks (") except in congressional and certain other classes of work showing amendments, and in court work with quoted language. Punctuation marks are printed after the quotation marks when not a part of the quoted matter, Examples: Insert the words "growth", "production", and "manufacture". This court finds you Guilty, except the word "steal", substituting therefor. . .

Place the semicolon (;) and the colon (:) outside the closing quotation marks. The question mark and the exclamation mark must be placed outside the closing quotation marks if the marks punctuate the entire sentence. Place them inside the closing quotation marks if they punctuate the quoted material only. Examples: As I was saying, "Seeing is believing." Did you see the sign, "Off Limits"? He asked me, "What is the punishment for shooting a man with a pistol?" All he said was, "What an awful mess!"

Use the single quotation mark (') when a quotation is enclosed within a quotation. Example: He answered, "I am not willing positively to say, 'Seaman Jones is the guilty one.'"

The rules on end spacing are as follows: Two spaces must follow all end punctuation marks, and two spaces must follow the colon.

When writing whole numbers, the numbers one through nine must be spelled out except when used in conjunction with other numbers in a series (example, 1, 2, 12, 25, and 50); as a measurement (example, 1 inch); time (example, 3 p.m.); decimals (example, 1.25); age (example, 6 years old); or as a percentage (example, 2%).

At the beginning of a sentence, numbers must be spelled out (example, Five years ago), except in questions and answers (Q. and A.) when time, money, percentage, serial numbers, and so on, are

concerned. In such cases use the numerals. Show dates as they are spoken in court (example, 1 June 1993 or 1st of June 1993). Always use numerals where monetary values are concerned and the money is a specific amount. If the amount is referred to in a general way, use words instead of figures. Examples: Q. How much money was in the bag? A. About a million dollars. Q. Exactly how much? A. \$1,055,000.00.

When writing fractions and whole numbers, transcribe the fraction by separating the figures with a slant (/); examples: 1/4, 1/2, 1/3, 5/8, 7/8, and 3 3/4. Do not use the fractions that appear on the keyboard. The reason for this is your fractions will be typed consistently throughout the record, since most keyboards have only the 1/4 and 1/2 fractions. An exception to this rule would be when the military judge or president of the court gives instructions, closes to vote on the findings and sentence, and states "three-fourths (or two-thirds) of the members present at the time the vote was taken concurring . . ." Type these fractions using words.

## IDENTIFICATION OF SPEAKERS

Identify the side or person conducting an examination by using one of the following standard stock entries (SSEs):

Questions by the prosecution:

Questions by the defense:

Questions by the military judge:

Questions by the president:

Questions by a court member (LT DOE):

Identify individual questions posed by the questioner by a Q. Identify answers by the witness in response to questions posed by a questioner having control of the stage of examination by an A. Identify answers by the witness in response to questions asked by anyone else by WITNESS.

Use these prefixes to identify speakers:



<u>COURT-MARTIAL PARTICIPANT</u>	<u>ORAL (SPOKEN)</u>	<u>TYPED</u>
Military Judge	JUDGE	MJ:
President (speaking as presiding officer)	PREZ	PRES:
Court Member	MEMBER LT DOE	MBR (LT DOE):
Trial Counsel	PROS	TC:
Assistant Trial Counsel	ATC	ATC:
Defense Counsel	DEF	DC:
Assistant Defense Counsel	ADC	ADC:
Individual Military Counsel	MC	IMC:
Individual Civilian Counsel	ICC	ICC:
Witness (when speaking but not answering a question on examination)	WITNESS	WIT
Accused (when speaking but not answering a question on examination as a witness on his or her own behalf)	ACCUSED	ACC:

## SLIPS OF THE TONGUE, FALSE STARTS

You must record the testimony of witnesses and the remarks of court personnel and transcribe verbatim all slips of the tongue, false starts, interruptions, and pauses. When the person speaking interrupts himself or herself or pauses, use two hyphens to show this interruption; example:

Q. What did he tell you?

A. Well, I— I’m not really certain.

When the person speaking is interrupted by another, use four hyphens to show this type of interruption; example:

Q. What did the commander tell you?

A. He told me that— — —

DC: I object. What the commander said is hearsay.

## REPORTER’S REMARKS

Paragraph 49b of the MCM, in discussing the duties of the reporter, states in part, “It is the duty of the reporter to include in the record everything that is said or takes place in open sessions, hearings out of

the presence of the court members, and the reporter will omit no portion of these proceedings from the record.” (Emphasis supplied.)

You must record such acts as a witness pointing to the accused when identifying the accused, or any other motion or movement of personnel in the courtroom (other than spectators). Reporting these reporter’s remarks is called ad libbing. Enclose your remark in brackets, except SSEs, to show that it is a reporter’s remark or an ad lib.

Report the swearing, opening, closing, recessing, adjourning of the court, or the calling and excusing of witnesses with SSEs. Notations by the reporter that are required to be enclosed in brackets should commence, if possible, on the same line or on the next immediate line; for example: A. [Pointing in the direction of the accused.] That’s him over there.

Insert other reporter notations, where brackets are not required, two lines below the preceding line and indent them two spaces from the left margin; example:

Lieutenant (junior grade) Hatch, the challenged member, withdrew from the courtroom.

## STANDARD STOCK ENTRIES

We have mentioned earlier the SSEs and their use for routine required items of information. The types of information covered by such entries are discussed as follows with examples.

### Opening and Closing of the Court

The reporter is responsible for noting the time the court opens, recesses, closes, and adjourns. Note that the record must show the time (expressed in hours and minutes) and the date of each opening, closing, recess, and adjournment of the court. After the court closes, it thereafter opens. After the court recesses or adjourns, it thereafter is called to order. Use the following SSEs for these purposes:

The court closed at 0915 hours, 15 November 1994.

The court opened at 0930 hours, 15 November 1994.

The court recessed at 0915 hours, 15 November 1994.

The court was called to order at 0930 hours, 15 November 1994.

The court adjourned at 0915 hours, 15 November 1994.

The court was called to order at 0930 hours, 15 November 1994.

## Calling Witnesses

The record must show that a witness was called or recalled by the prosecution, the defense, or the court. You must record the witness' name and, if a military person, rank or grade and armed force; examples:

Aviation Storekeeper Third Class John A. Doe, U.S. Navy, was called as a witness for the prosecution, was sworn, and testified as follows:

Yeoman Second Class Mary N. Christmas, U.S. Navy, was called as a witness for the defense, was sworn, and testified as follows:

Airman John A. Doe, U.S. Navy, was recalled as a witness for the court, was reminded that he was still under oath, and testified as follows:

### Stages of Examination

The reporter records and transcribes the proper stage of examination during the proceedings. The stages of examination usually take place in the following order: direct examination, cross-examination, redirect examination, recross-examination, and examination by the court.

When transcribing the record, type the stage of examination in capital letters and centered on the page, two lines below the SSE calling the witness or after the previous stage of examination. The following example shows where and how the stage of examination and the identity of the examiner should appear in the record:

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## DIRECT EXAMINATION

Questions by the Prosecution:

Q. State your full name, last, first, and middle, for the record.

A. John Adam Doe.

A brief method for recording the stages of examination, the party conducting the examination, and the first question the party will ask is shown in figure 3-2. Note that a witness called for the defense is initially examined by the prosecution. This examination is normally limited to establishing the identity of the witness and whether the witness knows the accused in the case. The defense then conducts the actual direct examination of its witness. The prosecution would conduct a cross-examination of a defense witness. Use the brief method shown in figure 3-2 for recording the previous information.

<u>PROSECUTION WITNESS</u>	<u>DEFENSE WITNESS</u>	<u>COURT WITNESS</u>
DIRECT - PROS - Q	DIRECT - PROS - Q	DIRECT - PROS - Q
CROSS - DEF - Q	DEF - Q	(JUDGE)(PREZ) - Q
REDIRECT - PROS - Q	CROSS - PROS - Q	CROSS - PROS - Q
		or
RECROSS - DEF - Q	REDIRECT - DEF - Q	CROSS - DEF - Q
COURT EXAM - (JUDGE) (PREZ) - Q	RECROSS - PROS - Q	
	COURT EXAM - (JUDGE) (PREZ) - Q	

**Figure 3-2.-Abbreviations used in recording stages of examination.**

## **MARKING EXHIBITS**

Another one of your duties during the proceeding will be to mark the exhibits received in evidence. You must mark prosecution exhibits in the following manner:

Prosecution Exhibit 1 for identification (insert consecutive Arabic numerals for each succeeding exhibit admitted).

Mark exhibits for the defense as follows:

Defense Exhibit A for identification (insert consecutive capital letters; for example, A, B, and C for each succeeding exhibit admitted). Transcribe defense exhibits in the record in the same manner as prosecution exhibits, except letter them instead of numbering them.

Mark appellate exhibits with Roman numerals; for example Appellate Exhibit I, Appellate Exhibit II.

After an exhibit is admitted in evidence, it is your responsibility to delete the words *for identification*. You will do this when directed by the military judge or president during the proceedings. If copies or a true description is submitted for original evidence received during the trial, the authenticity of the copies or description must be attested to. This is usually done by the TC. Here are a few examples:

A true copy.

A true description.

A true photograph.

Attest:

Attest:

Attest:

J. A. DOE  
LT, JAGC, USNR  
Trial Counsel

J. A. DOE  
LT, JAGC, USNR  
Trial Counsel

J. A. DOE  
LT, JAGC, USNR  
Trial Counsel

You must identify real evidence in the same manner as documentary exhibits; however, you will place identifying markings on a tag and attach them to the exhibit.

## **SAMPLE PLEAS AND FINDINGS**

The manner in which you will transcribe the accused's pleas and the findings of the court in the record is shown as follows. Remember, these are only samples. You must record and transcribe the pleas and findings verbatim exactly as stated by the defense or accused or as announced by the presiding officer:

### **Pleas**

#### Sample pleas of not guilty-one Charge, one Specification:

To the Specification and the Charge:	Not guilty.
	or
To the Specification of the Charge:	Not guilty.
To the Charge:	Not guilty.

#### Many Specifications and Charges; but plea to all consistent:

To all Specifications and Charges:	Not guilty.
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#### One Charge and two Specifications:

To Specification 1 of the Charge:	Guilty.
To Specification 2 of the Charge:	Not guilty.
To the Charge:	Guilty.

#### Two Charges—one with one Specification and one with two Specifications:

To the Specification of Charge I:	Not guilty.
To Charge I:	Not guilty.
To Specification 1 of Charge II:	Guilty.
To Specification 2 of Charge II:	Not guilty.
To Charge II:	Guilty.

#### Guilty with exceptions and substitutions-(Charged with larceny but pleading to the Lesser Included Offense (LIO) - wrongful appropriation):

To the Specification:	Guilty, except the word “steal”, substituting therefor the words “wrongful appropriation”; to the excepted words, Not guilty, to the substituted words, Guilty.
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To the Charge: Guilty.

Sometimes the defense may plead:

To all Charges and Specifications: Not guilty (or guilty).

## **Findings**

### Sample finding of guilty—one Charge and one Specification

Of the Specification of the Charge: Guilty.

Of the Charge: Guilty.

or

Of the Specification and the Charge: Guilty.

### Sample finding of guilty—one Charge and two Specifications:

Of Specification 1 of the Charge: Not guilty.

Of Specification 2 of the Charge: Guilty.

Of the Charge: Guilty.

### Sample finding two Charges—one guilty and one not guilty, one Specification under each Charge:

Of the Specification of Charge I: Guilty.

Of Charge I: Guilty

Of the Specification of Charge II: Not guilty.

Of Charge II: Not guilty.

### Sample finding in case of two Charges—two Specifications under each Charge, with the second Specification under each Charge found not guilty:

Of Specification 1 of Charge I: Guilty.

Of Specification 2 of Charge I: Not guilty.

Of Charge I: Guilty.

Of Specification 1 of Charge II: Guilty.

Of Specification 2 of Charge II: Not guilty.

Of Charge II: Guilty.

Sample finding in case of one Charge with one Specification thereunder, of which the court found the accused guilty with exceptions and substitutions:

Of the Specification of the Charge:	Guilty, except the words “in the nighttime burglariously break and enter” and “with intent to commit larceny therein”, substituting therefor the words “unlawfully enter” and “with intent to commit a criminal offense, to wit: Willful damage military property therein”; of the excepted words, Not guilty, of the substituted words, Guilty.
Of the Charge:	Not guilty, but guilty of a violation of Article 130.

Sample finding where there are several Charges and Specifications thereunder and the finding of the court is guilty to all the Charges and Specifications:

Of all Specifications and Charges:	Guilty.
------------------------------------	---------

If three charges and specifications were deliberated upon by the court, and the finding of the court was guilty as to the first and third charges with their specifications, but not guilty to the second charge and its specification, the following is the manner in which the findings should be recorded:

Of Charges I and III and the Specifications thereunder:	Guilty.
---	---------

Of Charge II and the Specification thereunder:	Not guilty.
--	-------------

If five charges were referred to trial and a motion for a finding of not guilty was sustained as to Charge II, the CA withdraws Charge IV after arraignment, the accused pleads guilty to Charge I and the court found the accused guilty of Charge III and its specification, but not guilty of Charge V and the specification thereunder, the findings would be set out as follows:

Of Charges I and III and the Specifications thereunder:	Guilty.
---	---------

Of Charge V and the Specifications thereunder:	Not guilty.
--	-------------

No mention should be made in the findings as to withdrawn charges or charges upon which a determination of not guilty has previously been made by the court.

In an appropriate case, where the accused is found not guilty of all charges and specifications, or of the charge and specification, amounting to an acquittal, the findings need not be indented or blocked, but should instead appear as one continuous statement by the president as shown in the following example:

PRES: Doe, it is my duty as president of this court to advise you that the court in closed session and upon secret written ballot has found you not guilty of (the) (all) Specification and Charge(s).

## **RECORDS OF TRIAL AND CONTENTS GENERAL AND SPECIAL COURTS-MARTIAL**

The final format of the record of trial is dictated by the MCM and supplemental regulation issued by the SECNAV(JAG). Making sure the record is correct and complete is one of your greatest responsibilities as a court reporter.

### **TYPES**

There are two types of trial records. These are verbatim and summarized records. Verbatim records are required in all GCM cases when any part of the sentence adjudged exceeds 6 months of confinement or other punishments that may be adjudged by an SPCM, or a BCD has been adjudged. A verbatim record is also required in SPCMs where a BCD has been adjudged. Summarized records may be used only in an SPCM that does not adjudge a BCD.

### **COPIES AND DISTRIBUTION**

In GCMs and SPCMs that require a verbatim transcript, prepare an original and four copies of the record of trial and send them to the CA. In all other GCMs and SPCMs, prepare an original and one copy of the record of trial and send them to the CA. In a joint or common trial you will need to prepare an additional copy of the record for each accused. The convening or higher authority may direct that additional copies of the record of trial of any GCM or SPCM be prepared. You should check the policy before sending the record of trial to make sure the correct number of copies is provided. You also must prepare a copy of the record for delivery to each accused after it is authenticated.

### **SECURITY CLASSIFICATION**

If the record of trial contains matter that is classified according to *Department of the Navy Information and Personnel Security Program Regulation*, OPNAVINST 5510.1H, the TC must make sure a proper security classification is assigned to the record of trial and on each page that classified material appears. Do not include classified matter in a record of trial whenever it can be avoided.

Before delivery of a copy of a classified record to the accused, send it to the CA who will remove all classified matter from it. The CA prepares a certificate showing the page(s) removed or partially

deleted and the exhibits removed. The cleansed copy of the record with the original certificate is then delivered to the accused. Attach a copy of the certificate and a statement signed by the accused acknowledging receipt of the cleansed copy of the record to the original record of trial.

### **GENERAL CONTENT AND ARRANGEMENT**

When you send a record of trial to the Judge Advocate General (JAG) or send it out for a judge advocate's review under Article 64(a), UCMJ, arrange the record and bind all the allied papers in the following order:

1. Front cover and inside front cover (chronology sheet) of DD Form 490.
2. Posttrial checklists 1, 2, or 3 and 4, 5, and 6.
3. Judge advocate's review pursuant to Article 64(a) if any.
4. Request of the accused for appellate defense counsel, or waiver or withdrawal of appellate rights, if applicable.
5. Briefs of counsel submitted after trial, if any.
6. Court-Martial Data Sheet, DD Form 494.
7. Court-martial orders promulgating the result of trial as to each accused (ten copies verbatim and four copies summarized).
8. When required, signed recommendation of the SJA or the legal officer, in duplicate, together with all clemency papers, including clemency recommendations by the court members.
9. Matters submitted by the accused pursuant to R.C.M. 1105.
10. Charge Sheet, DD Form 458 (unless included at the point of arraignment in the record).
11. Congressional inquiries and replies, if any.
12. Investigating Officer's Report, DD Form 457, pursuant to Article 32, UCMJ, if such investigation was conducted, followed by any other papers that accompanied the charges when referred for trial, unless included in the record of trial proper.
13. Advice of the SJA or the legal officer, when prepared pursuant to Article 34, UCMJ.

14. Requests by counsel and action taken by the CA; for example, requests about delay, witnesses, and depositions.

15. Records of former trials.

16. Record of trial proper in the following order:

a. Errata sheet, if any.

b. Index sheet with the reverse side showing receipt by the accused or the DC for a copy of the record or a certificate in lieu of receipt.

c. Record of proceedings in court, including Article 39(a) sessions, if any.

d. Authentication sheet, followed by certificate of correction, if any.

e. Action of the CA and, if appropriate, action of the OEGCMJ.

f. Exhibits admitted in evidence. Order is prosecution and defense.

g. Exhibits not received in evidence. You must note the page of the record of trial where each exhibit was offered and rejected on the front bottom of each exhibit as shown:

Offered Page \_\_\_\_\_ /Not Admitted Page \_\_\_\_\_

h. Appellate exhibits. These can include proposed instructions, written offers of proof or preliminary evidence (real or documentary), and briefs of counsel submitted at trial.

i. Back cover sheet.

The TC is ultimately responsible for arranging the record as indicated, except that items 7, 8, and 16e are inserted by the convening or reviewing authority, as appropriate, and items 11 and 15 are inserted by either the TC or the convening or reviewing authority, whichever has custody of them.

## **AUTHENTICATION OF THE RECORD**

A record is authenticated by the signature of a person specified who declares that the record accurately reports the proceedings. No person may be required to authenticate a record of trial if he or she is not satisfied that it accurately reports the proceedings.

In SPCMs where a BCD has been adjudged and in all GCMs the military judge present at the end of the proceedings authenticates the record of trial, or that portion over which the military judge presided. If

more than one military judge presided over the proceedings, each military judge authenticates the record of proceedings over which that military judge presided.

If the military judge cannot authenticate the record of trial because of his or her death, disability, or absence, the TC present at the end of the proceedings authenticates the record of trial. If the TC cannot authenticate the record of trial because of his or her death, disability, or absence, a member authenticates the record of trial. In a court-martial composed of a military judge alone, or as to sessions without members, the court reporter authenticates the record of trial when this duty would fall upon a member. A person authorized to authenticate a record may authenticate the record only as to those proceedings at which that person was present. In an SCM the SCM officer authenticates the record of trial.

## **CORRECTION OF THE RECORD**

In GCMs and SPCMs the TC examines the record of trial before authentication and causes those changes to be made that are necessary to report the proceedings accurately. The TC cannot change the record after authentication.

The TC may personally correct and initial the necessary changes. If major changes are necessary, the TC will direct the reporter to rewrite the entire record of trial or the portion of the record that is defective.

The TC must make sure the reporter makes a true, complete, and accurate record of the proceedings so the record will meet the applicable requirements.

After you send the record to the CA, the record may be corrected only by a certificate of correction or proceedings in revision. These two procedures are discussed later in this chapter.

## **SERVICE OF THE RECORD OF TRIAL**

In each GCM and SPCM you must serve a copy of the record of trial on the accused as soon as the record of trial is authenticated.



Attach the accused's receipt for the copy of the record of trial to the original record of trial. If it is impractical to secure a receipt from the accused before you send the original record of trial to the CA, prepare a certificate indicating that a copy of the record of trial has been transmitted to the accused. Include on this certificate the means of transmission and the address. This certificate must be attached to the original record of trial. Once the accused's receipt is received at the NLSO, send it to the CA as soon as possible.

If it is impractical to serve the record of trial on the accused because of (1) the transfer of the accused to a distant place, (2) the unauthorized absence of the accused, (3) military exigency, or (4) if the accused so requests on the record at the court-martial or in writing, send the accused's copy of the record to the accused's DC, if any. The TC will attach a statement to the record explaining why the accused was not served personally. If the accused has no counsel and if the accused is absent without authority, the TC prepares an explanation for the failure to serve the record. Send the explanation and the accused's copy of the record along with the original record to the CA. The accused is provided with a copy of the record as soon as possible after its return.

## **DISTRIBUTION OF RECORDS OF TRIAL**

Send the original and all copies of the record of trial, except for the accused's copy to the CA. Retain one copy in the court reporting shop.

## **SUMMARIZED RECORDS OF TRIAL**

In those cases not requiring a verbatim record, prepare a summarized record of trial using the DD Form 490 kit.

The fact that a summarized record of trial is to be prepared does not affect any of the procedures of the trial itself. As mentioned before, you should record everything verbatim because events could occur that require a verbatim record even though it might appear before trial that a summarized record would be sufficient.

### **Pleas**

Set forth the pleas verbatim as stated in court. If the accused pleads guilty, the ruling officer will

explain to the accused the meaning and effect of the guilty plea. This explanation includes (1) the elements of the offense, (2) that the plea admits every element charges and every act or omission alleged, and (3) that the plea authorizes conviction without further proof. The ruling officer also advises the accused of the maximum authorized punishment that may be adjudged for the offense upon conviction. The record of trial must show that this was done. Therefore, it is recommended that this be set forth verbatim.

### **Prosecution Case**

Set forth the testimony of witnesses in summarized form in first person, present tense. If no witnesses are called by the TC, the word *None* must be typed in the record at this point.

At the conclusion of the TV's case, insert the words *The prosecution rested*.

### **Defense Case**

Again, set forth the testimony of witnesses in summarized form in first person, present tense. If no witnesses are called by the defense, insert the word *None* in the record at this point.

If no evidence or testimony is presented by the accused, the record must so reflect. The words *The defense rested* should appear at the conclusion of the DC's case.

### **Findings**

Set forth the findings verbatim as announced in court. Before announcing the findings, the ruling officer may state that all manuals and legal references or authorities were removed from the closed session of the court. If such a statement is made, the record should so indicate by the addition of an entry reflecting this statement.

### **Personal Data on the Accused**

If any data on the accused is incorrect, such data must be noted and copied into the record with the substance of the corrective action taken noted.

## **Previous Convictions**

The TC presents evidence of admissible previous convictions, if any, and this information is included in the record of trial.

## **Matters in Extenuation and Mitigation**

The ruling officer advises the accused that he or she may present any matters he or she desires in mitigation or extenuation, including unsworn statements. If any matters are presented, transcribe them into the record in chronological order in which presented. If testimony is presented, the same procedures are used as when testimony is taken from other witnesses.

## **Sentence**

Before closing the court, the ruling officer instructs the court on the maximum sentence that may be adjudged. The record must reflect that this was done. The ruling officer also instructs the court on any matters presented in extenuation and mitigation. It is recommended that these instructions be set forth verbatim.

You must set forth the sentence verbatim as announced in court. Again, before announcing the sentence, as before announcing findings, the ruling officer may state that all manuals and legal authorities were removed from the closed session of the court. The addition of an entry to this effect should be made if such a statement is made by the ruling officer.

## **Recess or Adjournment**

Use standard stock entries (SSEs) in the record for recording recesses or adjournment, or for accounting for parties to the trial. The entry you should use for this latter purpose is as follows:

All parties to the trial who were present when the court recessed are again present in court.

If a member fails to return from a recess of the court, the reason must be shown. After arraignment, a member may be excused by the CA only for good cause.

Use an SSE for recording closings and openings of the court. No entry to show an accounting of parties to the trial need be made on opening the court except when necessary to show the absence of a party after the court was in closed session. Again, the reason must be shown for a member's absence.

## **Authentication**

A summarized record is authenticated in the same manner as a verbatim record. Appendix 13 of the MCM contains further information on the preparation of summarized records of trial and you should refer to it when preparing a summarized record of trial.

## **RECORDING CONTEMPT PROCEEDINGS**

What is contempt of court? It is defined as any willful disregard of the authority of a court or disobedience of its order. Article 48, UCMJ, gives courts-martial the power to punish for the following contemptuous acts: menacing words, signs, or gestures, and any disturbance of the court's proceedings by riot or disorder. These acts must occur in the presence of the court to be punished under Article 48, UCMJ. Any person, whether subject to the UCMJ or not (with the exception of the ruling officer or members of the court), including the accused, TC, DC, reporter, witnesses, spectators, and even the CA may be punished for contempt.

There is no separate record of contempt proceedings. Normally, a contempt proceedings is a part of the record of trial. If the court desires, however, the record of contempt proceedings may be transcribed separately so that it may be sent to the CA immediately for his or her action. Whether this is done or whether it is transcribed in the record of trial is a matter within the discretion of the ruling officer. See figure 3-3 for the recommended format to use in recording contempt proceedings.

There is no appeal or review of contempt action other than an automatic review by the CA. If, on review, the CA is satisfied that a contempt occurred and that the punishment adjudged is appropriate, the CA may order the punishment executed. The CA may (1) require the offender to serve any confinement adjudged pending formal review of the proceedings,

(2) reduce the punishment, and (3) designate an appropriate place of confinement, if necessary.

The offender must be notified, in writing, of the holding and the punishment and of the CA's action. To be effective, the punishment adjudged for contempt must be approved by the CA.

## **CERTIFICATE OF CORRECTION**

A certificate of correction is a document that corrects an error or omission so the record of trial will reflect what actually occurred at the trial. Keep in mind if the error or omission actually occurred at the trial, the record is correct as it stands and a certificate of correction must not be used.

The following is the normal course of action taken when a certificate of correction is necessary:

1. The CA returns the record to the military judge, president, or SCM, as appropriate, with a memorandum indicating the defects to be corrected and directing that a certificate be prepared.

2. The TC prepares the certificate. No erasures, additions, deletions, or other physical corrections are made in the record. The certificate is authenticated in the same manner as the record of trial. A copy must be served on the accused who must receipt for it. The receipt is attached to the original record. The certificate of correction is included in the original record immediately following the authentication

### **CONTEMPT PROCEEDINGS**

Against

Lieutenant John A. Doe, U.S. Navy

in the trial of the United States v. Very C. Pistol, Fireman, U.S. Navy, tried by Special Court-Martial convened by the Commanding Officer, USS DWIGHT D. EISENHOWER (CVN 69) on board USS DWIGHT D. EISENHOWER at sea, on 7 June 19CY.

The contempt proceedings commenced at 1920 hours, 7 June 19CY.

(Here follows a verbatim transcript of the contempt proceedings.)

The contempt proceeding ended at 1941 hours, 7 June 19CY, and the court then proceeded with the trial of Fireman Very C. Pistol, U.S. Navy.

### **AUTHENTICATION OF CONTEMPT PROCEEDINGS**

\_\_\_\_\_  
(Military Judge or President)

**Figure 3-3. Sample format for contempt proceedings.**

page. See figure 3-4 for a sample format to be used for certificates of correction.

## **PROCEEDINGS IN REVISION**

Proceedings in revision maybe directed to correct an apparent error, omission, or improper or inconsistent action by the court-martial that can be rectified by reopening the proceedings without material prejudice to the accused.

Because the action at proceedings in revision is corrective, proceedings in revision may not be conducted for the purpose of presenting additional evidence.

Examples of when proceedings in revision are appropriate include (1) correction of an ambiguous or apparently illegal action by the court-martial, (2) inquiry into the terms of a pretrial agreement, and (3) inquiry to establish the accused's awareness of certain rights.

The normal steps to be followed in proceedings in revision are as follows:

1. The CA returns the record to the TC with a letter pointing out the defects and directing proceedings in revision.

2. The court convenes. Only members who participated in the original findings and sentence may sit in the proceedings in revision. Some members may be absent so long as a quorum is present. However, if the court that heard the case has already been dissolved by an order, there can be no proceedings in revision. If necessary, the CA may detail a new military judge, TC, and DC who must be sworn during the proceedings in revision (unless previously sworn). If, however, a military judge alone adjudged the original findings and sentence, a new military judge may not be detailed to proceedings in revision.

3. The TC reads the CA's letter in open court and announces that it will be inserted in the record. The ruling officer then instructs the court, as necessary.

4. The court closes to reconsider the findings or sentence and cure the defect.

5. The court opens and announces its action. The court may revoke its former findings or sentence and announce a new finding or sentence; or it may adhere to its former findings and sentence.

6. The court then adjourns.

You will prepare the record of proceedings in revision and have it authenticated in the same manner as the original record of trial. Use SSEs in recording opening, closing, calling the court to order, adjournments, and so on.

Insert the original of the proceedings in revision in the original record of trial immediately following the authentication page, or certificate of correction, if used. Copies are placed in all copies of the record. Serve a copy on the accused and attach his or her receipt to the original record of trial. Then return the record to the CA for action.

## **SUMMARY COURT-MARTIAL RECORDS**

The record of trial by SCM consists of the original and at least two copies that include the following:

- The pleas, findings, and sentence and, if the accused was represented by counsel at the SCM, a notation to that effect
- A statement that the accused was advised of the matters set forth in R.C.M. 130-1(b)(1)
- If the SCM is the CA, a notation to that effect

Appendix 15, MCM, is a sample Record of Trial by Summary Court-Martial, DD Form 2329. This form is filled out by the SCM and becomes a part of the record of trial. In addition, if the accused is found not guilty of any charge that the accused entered a plea of not guilty, the charge sheet and a summary of any evidence presented during trial is included.

The summary of evidence considered by the SCM must be attached to the record only when the accused has entered a plea of not guilty to any charge and was then found guilty by the SCM.

Matters considered by an SCM in extenuation and mitigation must, in all cases, be summarized and attached to the record.

Although no reporter is required for an SCM, if it appears that the case will be rather lengthy or that several witnesses will be called to testify, it is probable that a reporter, if one is available, will be detailed to record the case. However, in the vast majority of cases, no reporter is detailed because the necessary clerical functions can normally be performed by any clerical assistant. In those cases, the SCM officer summarizes the testimony himself or

CERTIFICATE OF CORRECTION

\_\_\_\_\_, 19 \_\_\_\_

United States

v.

\_\_\_\_\_

\_\_\_\_\_

The record of trial in the above case, which was tried by the \_\_\_\_\_ court-martial convened by \_\_\_\_\_, dated \_\_\_\_\_ 19 \_\_\_\_, (at) (on board) \_\_\_\_\_, on \_\_\_\_\_ 19 \_\_\_\_, is corrected by the insertion on page \_\_\_\_\_, immediately following line \_\_\_\_\_, of the following:

“The detailed reported, \_\_\_\_\_, was sworn.”

This correction is made because the reporter was sworn at the time of trial but a statement of that effect was omitted, by error, from the record.

R.C.M. 1104(d) has been complied with.

**(NOTE:** The certificate of correction is authenticated in the same manner as for the record of trial.)

Copy of the certificate received by me this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_.

\_\_\_\_\_  
(Signature of accused)

\_\_\_\_\_  
(Name of accused)

(NOTE: The certificate of correction is bound at the end of the original record immediately before the action of the convening authority.)

Figure 3-4.—Format for certificate of correction.

herself. The SCM authenticates each copy of the record by signing them.

If the sentence ordered executed includes confinement on bread and water or diminished rations, the medical certificate is attached to the original copy of the record of trial.

## **DISTRIBUTION**

The SCM will cause a copy of the record of trial to be served on the accused as soon as it is authenticated. The SCM also causes the accused's receipt for the copy of the record of trial to be obtained and attaches to the original record of trial or attaches to the original record of trial a certificate that the accused was served with a copy of the record. If the record of trial was not served on the accused personally, the SCM attaches a statement explaining how and when such service was accomplished. If the accused was represented by counsel, that counsel may be served with the record of trial.

## **FORWARDING**

The original and one copy of the record of trial are sent to the CA for action.

## **DEPOSITIONS**

A deposition may be ordered whenever, after preferral of charges, due to exceptional circumstances of the case, it is in the interest of justice that the testimony of a prospective witness be taken and preserved for use at an Article 32 investigation or a court-martial. A CA who has the charges for disposition or, after referral, the CA or the military judge may order that a deposition be taken on request of a party.

A deposition is the out-of-court testimony of a witness under oath in response to questions by the parties that is reduced to writing or recorded on videotape or audiotape or similar material. A deposition taken on oral examination is an oral deposition, and a deposition taken on written interrogatories is a written deposition. Written interrogatories are questions, prepared by the prosecution, defense, or both, that are reduced to writing before submission to a witness whose testimony is to be taken by deposition. The answers, reduced to writing and properly sworn to, constitute the deposition testimony of the witness. A deposition

may be taken by agreement of the parties without necessity of an order.

A deposition may be taken to preserve the testimony of a witness who is likely to be unavailable at the investigation or at the time of trial. Part or all of a deposition may be used on the merits or on an interlocutory question as substantive evidence if the witness is unavailable. A deposition may be admitted in a capital case only upon offer by the defense. In any case, a deposition may be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness. If only a part of a deposition is offered in evidence by a party, an adverse party may require the proponent to offer all that is relevant to the part offered, and any party may offer other parts.

A deposition that is transcribed is ordinarily read to the court-martial by the party offering it. The transcript of a deposition may not be inspected by the members. Objections may be made to testimony in a written deposition in the same way that they would be if the testimony were offered through the personal appearance of a witness.

## **TYPES OF DEPOSITIONS**

There are two types of depositions—written and oral. A written deposition consists of a document that sets forth a series of written questions prepared by counsel. These are called interrogatories and cross-interrogatories. The other part of the document consists of the answers of the deponent (the person who testifies) that were given orally in the presence of the deposition officer and sworn to.

A written deposition may be used against an accused only when the accused is present at the taking of the deposition or when the accused expressly waives his or her right to be present. The Interrogatories and Deposition, DD Form 456 (fig. 3-5), illustrates a completed written deposition.

An oral deposition consists of a document that sets forth questions asked personally of the deponent by counsel and the deponent's answers. This questions and answers session is accomplished in the presence of the deposition officer, counsel for the accused and the government, the accused, and a reporter.

INTERROGATORIES AND DEPOSITION <sup>1</sup>																			
<p><sup>1</sup> This form to be used when a deposition is taken on written interrogatories. It may be appropriately modified when used for an oral deposition. (See generally, RCM 702, MCM, 1984.)</p> <p><sup>2</sup> Strike out words not applicable.</p> <p><sup>3</sup> General, special, or summary court-martial, military commission, court of inquiry, or military board.</p> <p><sup>4</sup> Insert name or title of person who is requested to authorize the taking of the deposition. A separate letter complying with RCM 702(c)(2) should be enclosed.</p> <p><sup>5</sup> To be subscribed by the trial counsel or other person requesting the deposition with name, rank, unit/command name, and official title, as "trial counsel," "defense counsel," "summary court," "recorder," etc. Describe legal qualifications, as "certified in accordance with Article 27(b)," "member of the bar of the Supreme Court of _____," etc.; if none, so state.</p> <p><sup>6</sup> If it is desired to give special instructions, there should be added "special instructions attached."</p>	<div style="text-align: center;"> UNITED STATES )  v. )  ) </div> <div style="text-align: center; margin-top: 10px;"> In the Matter of <sup>2</sup> )  <u>U.S. v. Fireman Phineus R. Quirk</u> ) </div>																		
Deposition of <u>Seaman Richard C. Jones</u> (stationed) (residing) <sup>2</sup> at <u>Naval Base, Norfolk, Virginia</u> to be read in evidence before a <sup>3</sup> <u>special court-martial</u> of the United States, convened to meet at <u>Naval Base, Norfolk</u> by <u>Court-Martial</u> Convening Order <u>2-94</u> dated <u>2 February</u> , 19 <u>94</u>																			
TO: <sup>4</sup> <u>Rear Admiral Eye M. Mean, Naval Base, Norfolk, Virginia</u> It is requested that you authorize the deposition of the above-named witness to be taken on the following interrogatories.																			
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th colspan="4" style="text-align: left; padding: 2px;">TRIAL COUNSEL OR OTHER PERSON REQUESTING DEPOSITION <sup>5</sup></th> </tr> <tr> <td style="width: 50%; padding: 2px;">a. TYPED NAME (Last, First, Middle Initial) RYAN, Peter R.</td> <td colspan="3" style="padding: 2px;">b. OFFICIAL TITLE Trial Counsel</td> </tr> <tr> <td style="padding: 2px;">c. UNIT/COMMAND NAME Naval Base, Norfolk, VA</td> <td colspan="3" style="padding: 2px;">d. LEGAL QUALIFICATIONS certified in accordance with Article 27(b)</td> </tr> <tr> <td style="padding: 2px;">e. SIGNATURE <i>Peter R. Ryan</i></td> <td style="width: 15%; padding: 2px;">f. RANK LT, JAGC, USN</td> <td colspan="2" style="padding: 2px;">g. DATE SIGNED 1 March 1994</td> </tr> </table>				TRIAL COUNSEL OR OTHER PERSON REQUESTING DEPOSITION <sup>5</sup>				a. TYPED NAME (Last, First, Middle Initial) RYAN, Peter R.	b. OFFICIAL TITLE Trial Counsel			c. UNIT/COMMAND NAME Naval Base, Norfolk, VA	d. LEGAL QUALIFICATIONS certified in accordance with Article 27(b)			e. SIGNATURE <i>Peter R. Ryan</i>	f. RANK LT, JAGC, USN	g. DATE SIGNED 1 March 1994	
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e. SIGNATURE <i>Peter R. Ryan</i>	f. RANK LT, JAGC, USN	g. DATE SIGNED 1 March 1994																	
<div style="text-align: right; margin-bottom: 10px;"> _____, 1 March, 19 94 </div> TO: <u>LT Peter R. Ryan, JAGC, Trial Counsel</u>																			
You will take or cause to be taken the deposition of the above-named witness on the following interrogatories, cross-interrogatories, and additional interrogatories, if any. <sup>6</sup>																			
By _____ Command of <u>Rear Admiral Mean</u>																			
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th colspan="3" style="text-align: left; padding: 2px;">PERSON ORDERING DEPOSITION OR PERSON SIGNING THEREFOR</th> </tr> <tr> <td style="width: 40%; padding: 2px;">a. TYPED NAME (Last, First, Middle Initial) MEAN, Eye M.</td> <td style="width: 15%; padding: 2px;">b. RANK RADM USN</td> <td style="padding: 2px;">c. SIGNATURE <i>Eye M. Mean</i></td> </tr> <tr> <td style="padding: 2px;">d. UNIT/COMMAND NAME Naval Base Norfolk, Virginia</td> <td colspan="2" style="padding: 2px;">e. OFFICIAL TITLE Commander</td> </tr> </table>				PERSON ORDERING DEPOSITION OR PERSON SIGNING THEREFOR			a. TYPED NAME (Last, First, Middle Initial) MEAN, Eye M.	b. RANK RADM USN	c. SIGNATURE <i>Eye M. Mean</i>	d. UNIT/COMMAND NAME Naval Base Norfolk, Virginia	e. OFFICIAL TITLE Commander								
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d. UNIT/COMMAND NAME Naval Base Norfolk, Virginia	e. OFFICIAL TITLE Commander																		

DD Form 456, OCT 84, Page 1

Previous editions are obsolete.

Figure 3-5. Interrogatories and Deposition, DD Form 456 (page 1 of 6).

<p><sup>1</sup> The officer taking the deposition shall administer the following oath to the deponent prior to deposing: "You (swear) (affirm) that the evidence you give shall be the truth, the whole truth, and nothing but the truth, so help you God?"</p> <p><sup>2</sup> If the spaces for answers are not sufficient, extra sheets may be inserted by the officer taking the deposition. In such case he/she will rewrite the interrogatories, writing the answers immediately below the respective interrogatories.</p>	<p>Interrogatories propounded by the above-named person requesting the deposition are as follows: <sup>1</sup></p> <p>First Interrogatory: Are you in the military service of the United States? If so, what is your full name, rank, unit/command name, and station? If not, what is your full name, occupation, and residence?</p> <p>Answer: <sup>2</sup></p>
	<p>Second interrogatory: Do you know the accused? If so, how long have you known him/her?</p> <p>Answer:</p>
	<p>Third interrogatory:</p> <p>Answer:</p>

DD Form 456, OCT 84, Page 2

**Figure 3-5.-Interrogatories and Deposition, DD Form 456 (page 2 of 6).**



<p><sup>1</sup> To be subscribed by the defense counsel or other person with name, pay grade, unit/command name, and official title. Describe legal qualifications, as "certified in accordance with Article 27(b)," "member of the bar of the Supreme Court of _____," etc.; if none, so state. When deposition is requested by the defense, the trial counsel propounds the cross interrogatories.</p> <p><sup>2</sup> If none, so state.</p> <p><sup>3</sup> Insert "court," "commission," "board," if appropriate. If not applicable, or if no interrogatories are propounded, so state.</p>	The following cross-interrogatories are propounded by:		
	PERSON PROPOUNDING CROSS-INTERROGATORIES <sup>1</sup>		
	a TYPED NAME (Last, First, Middle Initial)	b OFFICIAL TITLE	
	c UNIT/COMMAND NAME	d LEGAL QUALIFICATIONS	
	e SIGNATURE	f RANK	g DATE SIGNED
	<p>First cross-interrogatory: <sup>2</sup></p> <p>Answer:</p>		
	<p>Additional interrogatories by the _____ are as follows: <sup>3</sup></p> <p>Answer:</p>		

DD Form 456, OCT 84, Page 3

Figure 3-5.-Interrogatories and Deposition, DD Form 456 (page 3 of 6).

My answers to the foregoing interrogatories, cross-interrogatories, if any, are indicated above.			
<b>WITNESS</b>			
a. TYPED NAME (Last, First, Middle Initial)  JONES, Richard C.	b. SIGNATURE  <i>Richard C. Jones</i>	c. DATE SIGNED  6 Mar 94	
<b><u>CERTIFICATE OF PERSON TAKING DEPOSITION</u></b>			
<p>I certify that the above deposition was duly taken by me on the <u>6th</u> day of <u>March</u>, 19 <u>94</u>; the above-named witness, having been first sworn by me, gave the foregoing answers to the several interrogatories; that the above-named witness was given an opportunity to read his/her testimony after it was reduced to writing, and all corrections desired by the above-named witness were made; and the above-named witness subscribed the foregoing deposition in my presence at <u>NAVLEGSVCOFF, NAVBAS, Norfolk,</u> this <u>7th</u> day of <u>March</u>, 19 <u>94</u>. I further certify that the detailed reporter was duly sworn by me and that said reporter signed in my presence the reporter's certificate appearing below.</p>			
<b>OFFICER TAKING DEPOSITION</b>			
a. TYPED NAME (Last, First, Middle Initial)  RYAN, Peter R.	b. RANK  LT, JAGC USN	c. SIGNATURE  <i>Peter R. Ryan</i>	d. DATE SIGNED  7 Mar 94
e. UNIT/COMMAND NAME Naval Base Norfolk, Virginia		f. OFFICIAL TITLE Trial Counsel	
<b><u>REPORTER'S CERTIFICATION</u></b>			
<p>I certify that the foregoing interrogatories and answers thereto are a true, complete and accurate transcription of the interrogatories propounded to and the answers by the above-named witness.</p>			
<b>REPORTER</b>			
a. TYPED NAME (Last, First, Middle Initial)  DOELITTLE, John Q.	b. SIGNATURE  <i>John C Doelittle</i>		c. DATE SIGNED  7 Mar 94
d. UNIT/COMMAND NAME  Naval Base, Norfolk, Virginia			

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\* U.S. Government Printing Office: 1985-461-033/27100

Figure 3-5. Interrogatories and Deposition, DD Form 456 (page 4 of 6).

## DIRECT EXAMINATION

Questions by the prosecution:

Q. State your full name, grade, organization, and armed force.

A. Water T. Door, Aviation Boatswain's Mate Second Class, Naval Air Station, Pensacola, Florida.

Q. And your armed force, please?

A. United States Navy, sir.

Q. What is your social security number, Petty Officer Door?

A. 666-66-6666, sir.

Q. Petty Officer Door, do you know Airman Boat?

A. Yes, sir, I do.

Q. If he is present, would you please point to him and call him by name?

A. Airman Boat, sitting over there [pointing in the direction of Airman Boat].

Q. Door, what are your duties?

A. I am acting right now as a plane captain.

Q. I see. In that capacity, did you have direct control over Airman Boat?

A. Yes, sir, I did.

Q. Did you give him any specific instructions on 31 December 19CY which might be relevant to this case?

A. Yes, sir, I did. During this period of time we had been on a half-day schedule because of the Christmas holiday period and, seeing as this schedule ended on the 31st. I told Boat that he was to be at work at 0700 hours on 2 January. On the 2nd, he was not at work at 0700, and I reported it to the Master Chief.

TC: No further questions.

## CROSS-EXAMINATION

Questions by the defense:

Q. When did you last see Airman Boat?

A. I last saw him on 31 December, sir.

**Figure 3-5.-Interrogatories and Deposition, DD Form 456 (page 5 of 6).**

Q. You didn't go with him then?

A. No, sir. I believe he left with Airman Frost who also works for me.

Q. Did you say anything else to Boat, other than what you have testified to on direct examination?

A. No, sir, I did not.

Q. And that was the last time you saw him?

A. Yes, sir, the last time until the Shore Patrol brought him back.

#### REDIRECT EXAMINATION

Questions by the prosecution:

Q. When you last saw Airman Boat, where was he at that time?

A. Leaving the hangar, sir.

Q. And he was with Airman Frost, is that right?

A. Yes, sir.

#### RECROSS-EXAMINATION

Questions by the defense:

Q. Was Airman Boat in uniform or civilian clothes when you last saw him?

A. He was in uniform.

Q. Was he carrying anything-like a suitcase or package of any type?

A. Not that I can recall, sir.

Q. Did you personally inform someone that Boat was UA?

A. Yes, sir. I notified the Command Master Chief.

DC: I have no further questions.

TC: I have nothing further.

TC: That concludes the deposition.

**Figure 3-5.-Interrogatories and Deposition, DD Form 456 (page 6 of 6).**

## PROCEDURES FOR TAKING DEPOSITIONS

For oral depositions the accused has the right to do the following:

- Be present except when (1) the accused, absent for good cause, fails to appear after notice of time and place of the deposition, (2) the accused is disruptive, or (3) the deposition is ordered instead of producing a witness on sentencing and the authority ordering the deposition determines that the interests of the parties and the court-martial can be served adequately by an oral deposition without the presence of the accused

- Be represented by counsel

Each witness giving an oral deposition is examined under oath. The scope and manner of examination and cross-examination are such as would be allowed in the trial itself. The government makes available to each accused, for examination and use at the taking of the deposition, any statement of the witness that is in the possession of the government and that the accused would be entitled at trial.

For written depositions, the accused has the right to be represented by counsel for the purpose of taking a written deposition, except when the deposition is taken for use at an SCM. No party has a right to be present at a written deposition. The party requesting a written deposition submits to the opposing counsel a list of written questions to be asked of the witness. Opposing counsel examines the questions and is allowed a reasonable time to prepare cross-interrogatories and objections, if any.

The normal steps to be followed in the taking of a written deposition are as follows:

1. The side desiring the deposition gives the other side written notice that the deposition has been authorized by the CA, advises of the time and place it will be taken and the name and address of each person to be examined, and furnishes a list of written interrogatories to be asked the deponent.

2. The opposing counsel prepares cross-interrogatories and objections.

3. The interrogatories, objections, and cross-interrogatories are submitted to the CA, or to the court if it is in session.

4. The TC prepares the Interrogatories and Deposition, DD Form 456, including therein the interrogatories, cross-interrogatories, and objections.

5. The TC sends the deposition form to the command nearest the deponent with a cover letter, addressed return envelope, and a subpoena for a civilian witness, if necessary.

6. The command receiving the deposition form appoints a deposition officer and a reporter, if necessary.

7. Oral answers are recorded on the deposition form, even if an objection is set forth to the questions. The court will rule on the objections at the trial. The deposition officer must not make any rulings on the objections.

8. The deponent examines the deposition and signs it.

9. The deposition officer authenticates the deposition and returns it to the TC.

The normal steps to be followed in the taking of an oral deposition are as follows:

1. The side desiring the deposition gives the other side written notice that the deposition has been authorized by the CA, advises of the time and place it will be taken, and provides a memorandum stating the reasons for the deposition and the points desired to be covered in an oral examination of the deponent.

2. The opposing counsel then submits a similar memorandum.

3. The memorandums are submitted to the CA (or the court, if in session) who may prepare additional memorandums covering other points to be covered.

4. The TC then prepares the form for the deposition and it, along with the memorandums, is mailed to the command nearest the deponent under a cover letter with an addressed return envelope and subpoena for a civilian witness, if necessary. If the deposition is to be taken locally, the CA appoints a

deposition officer who, together with counsel, takes the deposition.

5. The command receiving the deposition form appoints a deposition officer, counsel for the government and accused, and a reporter. However, if charges have been referred to trial, the accused must consent to the appointment of a second counsel (other than counsel who will represent the accused before the court) to represent him or her.

6. The deposition is then taken.

7. Oral questions and the answers are transcribed verbatim, signed by the deponent, authenticated by the deposition officer, and returned to the TC.

The Interrogatories and Deposition, DD Form 456 (fig. 3-5), illustrates a completed written deposition. Figure 3-6 shows the format to be used in oral depositions.

#### SUGGESTED FORMAT FOR DEPOSITION ON ORAL DEPOSITION

UNITED STATES	)	
	)	
v.	)	Naples, Italy
	)	
VERY C. PISTOL	)	DEPOSITION
Electrician's Mate Third Class	)	
123-45-6789	)	
U.S. Naval Support Activity, Naples	)	

TC: Let the record reflect that this deposition proceeding commenced at 0915 hours, on 12 September 19CY, at the courtroom at Naval Legal Service Office, Naples, Italy, pursuant to the authority attached hereto as enclosure (1). Present at the taking of the deposition are:

Lieutenant Mary N. Christmas, Trial Counsel, certified in accordance with Article 27(b), UCMJ, and previously sworn.

Lieutenant John A. Dot, Defense Counsel, certified in accordance with Article 27(b), UCMJ, and previously sworn.

**Figure 3-6. Sample format for oral deposition.**

TC: Let the record further reflect that Mr. Hatch is present to testify as a witness for the prosecution in the forthcoming Article 32 investigation and possible court-martial in the case of United States versus Electrician's Mate Third Class Very C. Pistol.

TC: Counsel representing the accused is requested to state any objection he has pertaining to the taking of this deposition including the notice of the taking, time to prepare, or formal defect in the proceedings. Are there any objections?

DC: There are such objections We would object to the time given to prepare and that I was notified of this deposition at approximately 1530 hours, on 11 September 19CY. While I have had an opportunity to question Mr. Hatch, I have not had an opportunity to question any of the other individuals about whom--from whom statements have been taken and involving Mr. Hatch. And I received this packet last night at approximately 1800 hours; once again on 11 September 19CY. I would also object on the form of the proceedings. And would also object to this proceeding being implemented since other means are available of making Mr. Hatch available at the Article 32 investigation and this is not being done for any practical matter or any practical reason.

TC: Can you be more specific in the other means that you believe are available to assure his presence?

DC: Yes, he could be detained here in country until the Article 32 investigation.

TC: Are you familiar with what authority the US has to do that?

DC: I am aware of no authority under which he's--I've been given no indication that he is going to be deported by anyone in the form of any type of deportation letter or intent from the Italians. He is presently in country under what auspices and what authority I know not. But the government could also obtain the consent of the witness to come back for the Article 32 investigation should that prove necessary and should one be convened at any time. He has not indicated an aversion to coming back for an Article 32 investigation in that it does not properly state out--or set out the points to be covered as required under paragraph 117(b), and we would also object to the person who has been designated to take the deposition as being an involved party in the deposition-- an adversary party, and a person who's not neutral and detached who should act as a person who has been designated to take the deposition.

TC: Do you have authority for that final one?

DC: Just paragraph 117.

TC: Okay, anything--is that in paragraph 117, or is it only in the DA Pam?

DC: [No response.]

**Figure 3-6-Sample format for oral deposition--Continued.**

TC: Those objections will be noted and included in the record.

TC: The recorder, Legalman Second Class Door, has been previously sworn.

TC: I will now swear the deponent, Mr. Hatch.

Close D. Hatch, civilian, was called as a witness for the prosecution, was sworn and testified as follows:

#### DIRECT EXAMINATION

Questions by the prosecution:

Q. Will you state your full name, please?

A. My full name is Close Hatch, ma'am.

Q. Do you have a middle name?

A. My middle name is Dee, ma'am.

Q. Do you have a social security number?

A. Yes, I do, ma'am, 333-33-3333.

Q. Are you currently in the armed forces?

A. Yes, ma'am.

Q. When do you intend to depart?

A. In the morning.

-----  
The deposition continues  
-----

TC: Let the record reflect that these proceedings terminated at 1408 hours,  
12 September 19CY.

**Figure 3-6.-Sample format for oral deposition—Continued.**



AUTHENTICATING CERTIFICATE

(Certificate of person taking deposition)

I certify that the above deposition was duly taken by me on the 12th day of September 19CY, the above-named witness, having been first sworn by me, gave the foregoing answers to the questions presented to him, that the above-named witness was given an opportunity to read his testimony after it was reduced to writing, and all corrections desired by the above-named witness were made; and the above-named witness subscribed the foregoing deposition in my presence at 0915 hours, this 12th day of September 19CY. I further certify that the detailed reporter, LNC Water T. Door, was duly sworn by me and that said reporter signed in my presence the reporter's certificate appearing below.

I. M. LAWYER  
LT, JAGC, USNR  
NAVLEGSVCOFF  
Naples, Italy

REPORTER'S CERTIFICATE

I certify that the foregoing interrogatories and answers thereto are true, complete and accurate transcription of the interrogatories propounded to and the answers by the witness above-named.

WATER T. DOOR  
LNC, USN  
NAVLEGSVCOFF  
Naples, Italy

(NOTE: The taking of the deposition will follow the same basic format as a record of trial.)

**Figure 3-6. Sample format for oral deposition—Continued.**

## **OTHER REPORTING AND TRANSCRIPTION DUTIES**

On occasion you may be called on to record proceedings other than military courts or investigations. You could be called on to record meetings or conferences, administrative discharge boards, Article 39(a) sessions, Article 32 investigations, or courts of inquiry or other fact-finding bodies required to conduct a hearing for which a substantially accurate record of what transpired at the meeting or conference is needed or required.

There is no prescribed or standard format for such proceedings, with the exception of an Article 39(a) session and an Article 32 investigation. You should seek guidance on the format of the record from some responsible person concerned with the meeting or conference.

By using basically the same method that you use in court reporting, you should be able to produce an accurate record of the proceedings in the format desired or directed by appropriate authorities.

## **SUMMARY**

In summation, legal reporting is one of the most important and challenging duties of your rating as an LN. You will often find yourself right in the middle of important investigations, inquiries, or judicial proceedings for which an accurate record is important. Legal reporting is both a challenging and rewarding duty that must be done accurately and efficiently if it is to be of benefit to officials who are charged with the proper administration of the Navy. Your job, as a reporter, is to provide this accurate and efficient clerical support.